



RIGHT OF HINDU WOMEN TO CLAIM MAINTENANCE AND PROPERTY

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ABSTRACT

The maintenance laws for women in this country are separated into two categories: one deals with maintenance after a divorce or other matrimonial remedies, and the other deals with maintenance during the marriage's subsistence period. The major goal of this article is to clarify the purpose of maintenance, which is to prevent immorality and preserve women's and children's dignity. The necessity of alimony, as well as the support of a wife, widow, or dependant under the Hindu Adoption and Maintenance Act 1956, is discussed in this article. The rights of Hindu women to claim property are also discussed in this text.

KEYWORDS: Maintenance Law, Act 1956, Property Right, Hindu Women.

INTRODUCTION:

Various applications for maintenance are filed under section 125 Crpc in current times. Following the filing of a Crpc application, applicants seek maintenance under their own personal law. One of the primary reasons for this is that Section 125 guarantees a prompt trial and also imposes criminal liability on the individual. Because personal law does not impose criminal liability and does not provide for a rapid trial, the majority of applicants do not seek maintenance under its provisions. In this case, the court determined that if an application is filed pursuant to a specific provision of law, maintenance will be awarded in accordance with the method set down in that provision of law.

On 26 April 1987, Abhilasha (Appellant) was born. After a few years, both of her parents were segregated, and Abhilasha's mother filed an application against her husband Prakash in 2002 seeking maintenance under section 125 Crpc. In 2011, a magistrate dismissed the application and ordered the appellant to be maintained until she reaches the age of majority (18 years of age). The applicants filed a criminal revision under section 397 of the Code of Criminal Procedure against the order of the Judicial Magistrate (dated 16/02/2011), which was dismissed by the Additional Session Judge in an order dated 17/02/2014, with the addition that Abhilash is entitled to maintenance until 26/04/2005. (i.e Till the age of majority) Additional session judge Confirmed the Judicial Magistrate's order. Both Judges stated the same thing: Abhilash is not entitled to support under section 125 Crpc after achieving majority unless and until she suffers from some type of disability (Physical or mental). Because she was not disabled, she is not entitled to maintenance after reaching the age of majority. Later, both judges' orders were challenged in the Punjab and Haryana High Court under section 482 Crpc. The High Court upheld both judges' orders and agreed totally with their reasons. The High Court's verdict was appealed to the Supreme Court of India under Article 136. (Special Leave Petition).

ISSUES:

- 1: Whether the appellant can claim maintenance under section 125 Crpc after attaining the age of majority till marriage.
- 2: Whether Sec 125 of Crpc and Sec 20 of the Hindu Adoption and Maintenance Act are consistent with each other or not.

Statutes and Provisions Involved:

Sec 125 of Code of Criminal Procedure, 1973 states that:

Order for maintenance of wives, children, and parents.

If any person having sufficient means neglects or refuses to maintain-

His wife, who is unable to care for herself,

His little child, whether legal or illegitimate, is unable to support itself, whether married or not.

His legitimate or illegitimate child (not a married daughter) who has reached majority and is unable to maintain itself due to any physical or mental deformity or injury.

Upon proof of such neglect or refusal, a Magistrate of the first class may order such person to make a monthly allowance for the maintenance of his wife or such child, father or mother, at such monthly rate not exceeding five hundred rupees in

total, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate thinks fit.

Section 20 of Hindu Adoptions and Maintenance Act, 1956

Maintenance of children and aged parents.—

A Hindu is obligated to support his or her legitimate or illegitimate offspring, as well as his or her elderly or infirm parents, for his or her lifetime, subject to the restrictions of this section.

As long as the child is a juvenile, a legitimate or illegitimate child may seek maintenance from his or her father or mother.

A person's obligation to support an ageing or infirm parent or an unmarried daughter extends to the extent that the parent or unmarried daughter, as the case may be, is unable to support himself or herself out of his or her own earnings or other property. Explanation. A childless step-mother is included in this section as a "parent."

DAUGHTER'S RIGHT TO PROPERTY AFTER 2005:

After approximately 50 years, the centre adopted the 2005 amendment act to eliminate gender discrimination in coparcenary property. Previously, women were not considered coparceners entitled to inherit ancestral property on the same basis as boys. The act's section 6, which deals with a coparcener's entitlement to Hindu undivided family property, was changed. The 2005 amending act repealed the rule of survivorship and established testamentary and intestate succession.

Daughters have the same right as sons to become coparceners and are also able to demand a split of HUF. Additionally, she is free to dispose of her share in coparcenary property at her discretion. Since birth, daughters have been recognised as coparceners. Similarly, the son and daughter will bear equal accountability. However, only daughters born in HUF will understand the coparcenary. Section 24 of the statute was removed because it prohibited a widow the ability to remarry and inherit her husband's possessions.

Under the Hindu succession act, a married daughter has a title to property.

Following marriage, the daughter will retain her coparcener status but will no longer be a member of our parents' Hindu undivided family. She has the right to petition for partition and he has the right to become a Karta of HUF only if she is the eldest coparcener of her father's HUF. After the married daughter's death, her kid is entitled to her half. Notably, the daughter does not have the right to donate her share in the HUF property while she is alive, but she is capable of doing so through a will. After the married daughter's death, her portion immediately passes to her lawful heirs.

CONTENTIONS OF THE PARTIES:

Invoking the Supreme Court's decision in Jagdish Jugtawat v. Manju Lata2, Mrs. Makhija (counsel for the appellant) contended that despite her lack of physical or mental disability, she is entitled to maintenance even after attaining the age of majority until marriage under section 20 of the Hindu Adoption and Maintenance Act, 1956. Additionally, it was argued that because she is unemployed, she is entitled to support from respondent Prakash. Finally, the appellant argued that the High Court erred in refusing to grant support under section 20 of the Hindu Adoption and Maintenance Act.

On the other hand, counsel for the respondents stated that the High Court's ruling is entirely valid because the appellant is not entitled to maintenance under section 125 Crpc after attaining the age of majority without suffering from any type of disability (physical or mental) or injury.

OBSERVATIONS:

The court cited *Nanak Chand v. Chandra Kishore Aggarwal*³, in which the court interpreted the meaning of Section 488 Crpc 1898, which is nearly identical to Section 125 Crpc 1973. The Supreme Court concluded in the *Nanak Chand* case that Section 488 of the Criminal Procedure Code and Section 20 of the Hindu Adoption Act are reconcilable. The Court distinguished the jurisdiction of both sections by holding that Section 488 Crpc grants maintenance to the child's daughter regardless of the child's religion. However, Section 20 of the Hindu Adoption and Maintenance Act makes maintenance exclusively available to Hindus as a matter of religion. Additionally, it was noted that while Section 125 of the Criminal Procedure Code imposes criminal accountability, Section 20 of the Hindu Maintenance Act is a subject of personal law and does not entail criminal liability.

Additionally, the court cited the case of *Jagdish Jugtawat v. Manju Lata*, in which the family court gave the child maintenance till marriage by combining Section 125 of the Crpc with Section 20 of the Hindu Adoption Act. Both the Supreme Court and the High Court have stated that while section 125 Crpc does not allow for support till marriage, section 20(3) of the Hindu Adoption and Maintenance Act does. However, he declined to obstruct the Family Court's order, arguing that doing so would result in a slew of proceedings.

Additionally, the court cited the case of *Noor Saba Khatoon v. Mohd. Qasim*⁴ in which the high court reversed a family court ruling for maintenance based on Section 3(1)(b) of the Muslim Women Act, 1986. The Supreme Court reversed this order, holding that Section 125 Crpc can be repealed only through the Statute, not through Personal Laws. Additionally, the Supreme Court stated in this instance that both Section 3(1)(B) and Section 125 are incompatible with one another.

Judgment: On behalf of the observations made, The court held that

- 1: Both Section 125 Crpc and Section 20 of the Hindu Adoption and Maintenance Act are consistent with each other.
- 2: A Hindu married daughter can claim maintenance till marriage under Section 20 of the Hindu Adoption Act but the same cannot be claimed under Section 125 Crpc until and unless she is suffering from any form of Disability.
- 3: Since in the present case Application of Maintenance was applied under Section 125 Crpc hence she is not entitled to the maintenance till marriage.

TRENDS FOLLOWED AND ANALYSIS:

In *Rajesh Vs Neha*⁵, the Supreme Court relied on the preceding judgement, noting that the "Court distinguished between the award of maintenance to children under Section 125 of the Cr.P.C., which limits a child's claim to maintenance until he or she attains majority, and the award of maintenance to adults under Section 125 of the Cr.P.C. However, if an unmarried daughter is unable to support herself due to a physical or mental abnormality or injury, the father is compelled to support her even after she attains majority under Section 125(1)(c). Additionally, the court stated that "the purpose and object of Section 125 Cr.P.C. are to provide immediate relief to the wife and children in a summary proceeding, whereas Section 20 read in conjunction with Section 3(b) of HAMA contemplates a much broader right that requires determination by a civil court." The supreme court underlined in this judgement the distinction between an application for maintenance under section 125 Crpc and an application for maintenance under any other personal law.

In *Sanjay Jagannath Phagnekar vs. The State Of Maharashtra And Ors*, the Bombay High Court reversed a trial court's ruling allowing maintenance to an unmarried and perfectly capable daughter after she reached the age of majority. The Bombay High Court stated in *Abhilasha Vs Prakash* that "an unmarried daughter is clearly entitled to maintenance from her father until she marries, even if she has become major." This is a statutory right recognised by Section 20(3) and may be enforced by an unmarried daughter in accordance with the law. Because the application was submitted pursuant to section 125 of the Crpc, maintenance will be provided in accordance with the provisions of section 125.

Conclusion: Any girl may seek maintenance under Section 20 of the Hindu Maintenance Act, but the application must be submitted under that section, not under section 125 of the Criminal Procedure Code. Maintenance shall be provided in accordance with the applicable requirements of the law.

CONCLUSION:

It is concluded that the apex court is concerned with the contradiction of the daughters' coparcenary rights regarding whether their father was alive or not on or before the amended date of law, which was in relation to the interpretation of section 6 of the Hindu Succession Act, 1956, as amended by the Hindu Succession (Amendment) Act, 2005. However, all the inconsistent judgements have been vacated by the highest court's three-judge decision. The girls now possess

coparcenary rights over their father's possessions.

Whether he was alive or not at the time the statute was modified. As a result of the current verdict, the 2005 amendment act has been ruled retrospective, and daughters now have equal rights to ancestral property regardless of whether the father died prior to September 9th, 2005. A woman shall receive an equal portion of the undivided family property regardless of whether her father was alive or not at the time the legislation was revised in 2005, emphasising that the provision is retroactive.

The Hindu Adoption and Maintenance Act, 1956 is a critical piece of legislation for ensuring the rights of women, children, the elderly, and infirm. Thus, this Act ensures that they have the necessary means to live and support themselves by preventing them from dying on the street for lack of food or housing. This Act ensures that no miscarriage of justice occurs and that the enacted portions are strengthened as appropriate to make established rights more audible and apparent.

REFERENCES:

1. 2020 SCC OnLine SC 736
2. Code of Criminal Procedure, 1973
3. Deepak Garg-B.A.L.L.B. (Hons.), at Chandigarh University, Gharuan.
4. Hindu Adoption and Maintenance Act, 1956.
5. *Jagdish Jugtawat v. Manju Lata*, (2002) 5 SCC 422
6. *Nanank Chand v. Chandra Kishore Aggarwal*, (1969) 3 SCC 802
7. *Noor Saba Khatoon v. Mohd. Qasim*, (1997) 6 SCC 233
8. *Rajesh v. Neha*, (2021) 2 SCC 324
9. Sandeep Rana-B.A.L.L.B. (Hons.), at Chandigarh University, Gharuan and